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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,296	12/05/2003	Tadlington A. Stout	AQU400US	2162

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CHARLES D. GAVRILOVICH, JR.,  
GAVRILOVICH, DODD & LINDSEY, LLP  
985 PASEO LA CRESTA, SUITE B  
CHULA VISTA, CA 91910-6729

EXAMINER
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NGUYEN, TAM M

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/729,296	STOUT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tam Nguyen	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, 7, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Weissbuch (5,478,312).

1. As to claims 1 and 7, Weissbuch discloses an aquatic exercise device comprising a dome-shaped bell (12) having an apex opposite an opening of the dome-shaped bell and having a bell axis extending through the apex and a center of the opening and a handle (10) connected to an interior of the dome shaped bell and extending through the opening such that a portion of the handle is outside of the interior of the bell wherein the handle has an axis (34) that is non-perpendicular to the bell axis (see Figs. 2 & 3).

2. As to claim 5, Weissbuch discloses an exercise device as described above. Weissbuch further discloses that the angle between the handle axis and the bell axis may be between zero and ninety (see Col. 6, lines 36-41 and Figs. 5, 9 & 11).

3. As to claims 10 and 11, Weissbuch discloses an exercise device as described above (see discussion of claim 1). Weissbuch further discloses another dome-shaped bell connected to the handle opposite the dome-shaped bell wherein the handle axis and the bell axis coincide with the bell axis of the other dome-shaped bell and the bell

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axis of said other bell extends from an apex of said other dome-shaped bell to the opening of said other dome-shaped bell (see Fig. 3).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weissbuch in view of MacKechnie (4,623,142).

4. As to claim 2, Weissbuch discloses an exercise device as described above. Weissbuch does not disclose a plurality of fins symmetrically arranged along the outer surface of the dome-shaped bell. MacKechnie discloses a similar exercise device having a handle and bell that includes fins (4) symmetrically arranged on the surface thereof (see Fig. 1). The use of fin structures on various objects that are moved through water for exercise is well known in the prior art. Thus at the time of the invention, it would have been obvious to a person of ordinary skill in the art to add MacKechnie's fins to Weissbuch's dome-shaped bells to provide enhanced exercise resistance.

5. As to claims 3 and 4, Weissbuch and MacKechnie disclose a modified exercise device as described above (see discussion of claim 2). Weissbuch further discloses that the handle axis is parallel to the bell axis and the handle axis coincides with the bell axis (see Fig. 2).

6. As to claims 8 and 9, Weissbuch discloses an exercise device as described above (see discussion of claim 7). Weissbuch does not disclose a handle having two handgrips outside the interior of the dome shaped bell. MacKechnie discloses a similar exercise device that includes a connector tube (6) for connecting two exercise devices together (see Fig. 4). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to add such a connector to Weissbuch's device to combine two of Weissbuch's devices to provide two hand grips such that both of a user's hands and arms can be exercised simultaneously. The combination of the two devices allow for a handle angle formed between the handle axis and the bell axis to be between zero and ninety degrees.

Claims 6 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weissbuch in view of Solloway (4,468,023).

7. As to claim 6, Weissbuch discloses an exercise device as described above (see discussion of claim 1). Weissbuch does not disclose a plurality of apertures as substantially claimed. Solloway discloses a similar exercise device having a handle and bell that includes fins (4) and apertures (214) (see Figs. 22 and 23). The use of fin structures combined with apertures on various objects that are moved through water for exercise is well known in the prior art. Thus at the time of the invention, it would have been obvious to a person of ordinary skill in the art to add Solloway's apertures to Weissbuch's dome-shaped bells to provide relatively less exercise resistance.

8. As to claims 12-14, Weissbuch and Solloway disclose a modified exercise device as substantially claimed (see discussion of claims 2, 6, 10 and 11).

9. As to claims 15-17, Weissbuch, Solloway and MacKechnie disclose a modified exercise device as substantially claimed and inherently a method of aquatic exercise of a user's upper body as substantially claimed (see MacKechnie, Col. 2, lines 1-6, 21-23 and 49-52 & Fig. 4, and discussion of claims 2, 6, 10 & 11).

***Response to Arguments***

10. Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 572-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 28, 2005

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STEPHEN R. CROW  
PRIMARY EXAMINER  
ART UNIT 332